



## THE ECONOMIC PAMPHLETEER JOHN IKERD

### Government regulation: Too much or too little

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On June 28, 2024, the U.S. Supreme Court reversed a 40-year-old Court decision that had made it easier for the federal government to enforce regulations that protect the environment, public health, workers, and consumers from economic exploitation. The six-to-three majority ruling was widely considered a victory for corporate and conservative political interests that have worked for decades to weaken government regulations.

The case has been called “the conservative-dominated court’s clearest and boldest repudiation yet of what critics of regulation call the administra-

tive state” (Sherman, 2024a, para. 3). The same justices, by the same majority, stripped the Securities and Exchange Commission of its primary means of fighting fraud by requiring jury trials for accused violators of SEC rules (Sherman, 2024b). In other words, the current Supreme Court has demonstrated a commitment to weakening the government’s ability to write and enforce rules and regulations.

Many in both conventional and sustainable agriculture circles may see these decisions as a logical response to government regulatory overreach.

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*Why an **Economic Pamphleteer**? In his historic pamphlet *Common Sense*, written in 1775–1776, Thomas Paine wrote of the necessity of people to form governments to moderate their individual self-interest. In our government today, the pursuit of economic self-interest reigns supreme. Rural America has been recolonized, economically, by corporate industrial agriculture. I hope my “pamphlets” will help awaken Americans to a new revolution—to create a sustainable agri-food economy, revitalize rural communities, and reclaim our democracy. The collected *Economic Pamphleteer* columns (2010–2017) are available at <https://bit.ly/ikerd-collection>*

According to the politically powerful American Farm Bureau Federation (AFBF, n.d.),

Federal regulations have a direct impact on farmers and ranchers, and over the years, the breadth and extent of that regulatory landscape have increased. AFBF has taken a stand against regulatory overreach and is working to reform the federal regulatory process and preserve farmers' and ranchers' land-use and water rights. (para. 1)

The AFBF claims to represent America's farmers.

Many in the sustainable organic, regenerative, and local food movements may also see government regulations as unnecessary obstacles rather than public necessities. Several articles in this journal have identified government regulations as a major obstacle to market access and economic viability for small farms and local food enterprises:

Food safety regulations designed for industrial-scale food producers can create insurmountable challenges when applied to small-scale food producers. These challenges can make for a frustrating environment for food consumers, producers, and regulators, at times leading to tensions between food producers and people working in food safety. (Martin & Perkin, 2016, p. 13)

Food safety regulations involve a tradeoff: the costs of regulatory compliance in exchange for a reduction in the risk of foodborne illness. But local food advocates point out that these costs have a disproportionate impact small food producers, and that this impact threatens the viability and continued growth of the farm direct marketing sector. (Brekken, 2013, p. 95)

Seven perceived barriers to urban and peri-urban agriculture in the greater Chicago metropolitan area are identified [in this article] ... All

seven perceived barriers involve unclear or agriculture-unfriendly regulations governing urban and peri-urban agriculture. Results suggest that urban and peri-urban farmers commonly are being forced to operate within a legal limbo or petition for exceptions to a variety of current regulations. (Castillo et al., 2013, p. 155)

No two municipalities approach the urban livestock question in the same way; however, each seeks to place limits on raising livestock in urban areas through some combination of regulatory land use tools. (Butler, 2012, p. 193)

Local food pioneer Joel Salatin expresses his frustrations with government regulations in his 2007 book, *Everything I Want to Do is Illegal*. Salatin

concludes that the most reasoned approach is to distrust everything that comes from the government. In explaining why, he quotes Lord Acton, a nineteenth-century British historian, who famously said, "Power corrupts, and absolute power corrupts absolutely."

But what about the power of courts? The Supreme Court ruled that individuals and corporations have a right to a jury trial when they sue government regulatory agencies for

damages resulting from what they consider inappropriate regulations. Juries will now decide whether regulated business practices threaten consumers, workers, the environment, or public health, and if so, by how much. Juries will now decide whether corporations have violated the rules necessary to ensure the competitiveness of markets.

Corporate lawyers can now focus on persuading juries that government agencies have overreached their authority. Decisions of government scientists and academic experts can be overruled by juries composed of people with little knowledge or expertise in assessing the threats posed by the business practices in question. Juries

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will decide how much corporations are to be compensated for damages caused by government overreach.

In cases where regulatory agencies have been *captured* by corporate interests, the new Supreme Court rulings will allow public interest groups to sue regulatory agencies to force the government to regulate more effectively (Hempling, 2014). Small farms and businesses that are currently overregulated also could sue the government for regulatory relief. However, new court cases are far more likely to be initiated by corporate interests than by public interests. Many large corporations have teams of lawyers that can be expected to rely on negative public perceptions of the government among jurors to weaken or eliminate regulations that are already too weak or too weakly enforced to protect the public interest.

I agree that smaller, diversified farming operations, local food enterprises, and small businesses in general are currently overregulated. Such operations simply do not pose the same, or even similar, threats to the environment, public health, and consumers as large, specialized farming operations, agri-food corporations, or large corporate businesses in general. Small, independently owned and operated enterprises should not be forced to deal with the level of regulatory scrutiny, restraint, inspection, and paperwork that is necessary to regulate large corporation organizations.

Small, diversified farms, for example, don't concentrate chemical and biological wastes in quantities greater than nature can utilize or neutralize. Food producers and processors who rely on local markets must maintain the confidence and trust of their customers to survive. The same is true of small local businesses in general. Once a betrayal of trust were revealed, the word would spread within a community, and potential violators know they would soon be without customers.

However, large operations use their political power to ensure that smaller, low-risk operations

are forced to comply with the same regulations as their large, high-risk operations. This helps them solicit support from smaller producers in opposing regulations, and they can spread the costs of unavoidable regulations over more units of production.

Small farms and local food systems need government regulations that protect them from the suppressive and predatory tactics of industrial agrifood corporations. They need government regulations to restore competitiveness to agricultural markets and ensure transparency in product labeling and marketing. They don't need the same regulation as large, agribusiness corporations because they do not pose significant risks to the environment or public health.

I have long advocated for legalizing and

formalizing a system for contractual relationships between local food producers and their customers that would absolve the government of its current response to ensure the safety and integrity of food products and production processes. Whenever a personal sense of trust exists between consumers and producers, there is no logical justification for regulatory oversight or verification. Any disputes arising from such relationships could be

addressed using existing contract laws.

Industrial agri-food systems, however, will always need to be regulated because the relationships are impersonal and there is no justification for placing public trust in purely economic entities. In the absence of effective regulations, the industrial agri-food system will continue to degrade natural resources, pollute the environment, threaten public health, and deprive those with better ideas of economic opportunities. It is in the economic interest of the corporate agri-food system to do so. It's not a matter of the government regulating *too much* or *too little*, but of regulating *better* when needed and knowing when regulation is and isn't needed.

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